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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160630573-6573-01]

RIN 0648-BG19

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management
Measures**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 45 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 45). This proposed rule would extend the 3-year sunset provision for the Gulf of Mexico (Gulf) red snapper recreational sector separation measures for an additional 5 years. Additionally, this rule would correct an error in the Gulf red snapper recreational accountability measures (AMs). The purpose of this proposed rule is to extend the sector separation

measures to allow the Council more time to consider and possibly develop alternative management strategies within the Gulf red snapper recreational sector.

DATES: Written comments must be received on or before [*insert date 45 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2016-0089" by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0089*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive

information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 45, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes red snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery

resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. In meeting these requirements, Amendment 45 would extend a sunset provision implemented through the final rule for Amendment 40 to the FMP (80 FR 22422, April 22, 2015) for an additional 5 years.

Amendment 40 established distinct private angling and Federal for-hire (charter vessel and headboat) components of the Gulf reef fish recreational sector fishing for red snapper, and allocated red snapper resources between these recreational components. The purpose for establishing these separate recreational components was to provide a basis for increasing the stability for the for-hire component and the flexibility in future management of the recreational sector, and to reduce the likelihood of recreational red snapper quota overruns, which could jeopardize the rebuilding of the red snapper stock (the Gulf red snapper stock is currently overfished and is under a rebuilding plan). As a result of the stock status, the actions in Amendment 40 were also intended to prevent overfishing while achieving the OY and rebuilding the red snapper stock, particularly with respect to recreational fishing opportunities.

Amendment 40 defined the Federal for-hire component as including operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish and their angler clients. The private angling component was defined as including anglers fishing from private vessels and state-permitted for-hire vessels. Amendment 40 allocated the red snapper recreational quota between the Federal for-hire and private angling components at 42.3 and 57.7 percent, respectively. The allocation was derived by using historical and recent time series of recreational landings. Amendment 40 also established accountability measures for the Gulf red snapper recreational components. The component allocation was applied to the red snapper recreational annual catch target (ACT), which is set 20 percent below the recreational annual catch limit. Both components' Federal red snapper seasons begin on June 1 and close when the respective component's ACT is projected to be met.

Amendment 40 also applied a 3-year sunset provision for the regulations implemented through its final rule. The sunset provision maintained the measures for sector separation through the end of the 2017 fishing year, on December 31, 2017.

The 3-year sunset provision in Amendment 40 was included to

provide an incentive for the Council to continue to evaluate alternative management measures or programs for the recreational sector. Unless modified, after the 2017 fishing year, on January 1, 2018, the management measures implemented through Amendment 40 will expire and the recreational sector will be managed as a single entity. The Council is currently working to develop and approve other amendments to address the management of the charter and headboat fishing within the Federal for-hire component (Amendments 41 and 42 to the FMP, respectively). The development of these amendments is taking longer than the Council anticipated, and if approved by NMFS, would likely not be effective until after the sector separation provisions expire at the end of the 2017 fishing year (December 31, 2017). Therefore, through Amendment 45, the Council determined there was a need to extend the sunset provision to allow for additional time to consider and possibly implement alternative management strategies within the Gulf red snapper recreational sector.

Management Measure Contained in This Proposed Rule

Amendment 45 would extend the 3-year sunset provision for separation of the Federal for-hire and private angling recreational components for Gulf red snapper and associated

management measures for an additional 5 years. This proposed rule would extend Gulf recreational red snapper sector separation through the end of the 2022 fishing year, on December 31, 2022, rather than the current sunset date of December 31, 2017. Beginning on January 1, 2023, the red snapper recreational sector would be managed as a single entity without the Federal for-hire and private angling components. The Council would need to take further action for these recreational components and management measures to extend beyond the 5-year extension proposed in Amendment 45.

Additionally, as a result of extending the sunset provision for sector separation, this proposed rule would extend the respective red snapper recreational component quotas and ACTs through the 2022 fishing year, instead of through the 2017 fishing year as implemented through Amendment 40.

As described above, extending the duration of the Gulf red snapper recreational sunset provision would give the Council additional flexibility in developing alternative management approaches for red snapper.

Additional Proposed Changes to Codified Text

On May 1, 2015, NMFS published the final rule for a framework action to revise the Gulf red snapper commercial and

recreational quotas and ACTs, including the recreational component ACTs, and to announce the closure dates for the recreational sector components for the 2015 fishing year (80 FR 24832). However, during the implementation of the framework action, the term and regulatory reference for total recreational quota was inadvertently used instead of total recreational ACT when referring to the applicability of the recreational component ACTs after sector separation ends in § 622.41(q) (2) (iii) (B) and (C). This rule corrects this error by revising the text and regulatory references within the component ACTs to reference the total recreational sector ACT instead of the total recreational quota in § 622.41(q) (2) (iii) (B) and (C).

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small

Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to extend the sunset provision that would end the distinct private angling and Federal for-hire components (sector separation) of the red snapper recreational sector. This would allow more time for the Council to develop and potentially implement Federal for-hire and private angling component management measures to better prevent overfishing while achieving the OY on a continuing basis, particularly with respect to recreational opportunities, and while rebuilding the red snapper stock. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would directly affect all vessels with a Gulf Federal charter vessel/headboat reef fish permit (hereafter referred to as a for-hire permit). Headboats, which charge a fee per passenger, and charter vessels, which charge a fee on a whole vessel basis, are types of vessel operations that participate in the for-hire fishing component of the recreational sector. In addition to the difference in how fees are paid, headboats are generally larger

and carry more passengers than charter vessels. A for-hire permit is required for for-hire vessels to harvest reef fish species, including red snapper, in the Gulf Exclusive Economic Zone (EEZ). On February 17, 2016, there were 1,312 valid (non-expired) or renewable for-hire permits. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS).

Participation in the SRHS is based on determination by the Southeast Fishery Science Center that the vessel primarily operates as a headboat. Sixty-nine Gulf vessels were registered in the SHRS as of February 2016. As a result, the estimated 1,312 vessels expected to be directly affected by this proposed rule are expected to consist of 1,243 charter vessels and 69 headboats. The average charter vessel is estimated to receive approximately \$83,000 (2015 dollars) in annual revenue. The average headboat is estimated to receive approximately \$252,000

(2015 dollars) in annual revenue.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule. Although this proposed rule would also directly affect recreational anglers, recreational anglers are not small entities under the RFA.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.5 million (NAICS code 487210, for-hire businesses) for all its affiliated operations worldwide. All for-hire fishing businesses expected to be directly affected by this proposed rule are believed to be small business entities.

This proposed rule consists of one action that would extend the sunset date of the sector separation provisions for the recreational harvest of red snapper in the Gulf, and correct the Gulf red snapper recreational sector AMs. Sector separation is scheduled to sunset at the end of 2017 fishing year. This proposed rule would extend the sunset date for an additional 5

years, through the 2022 fishing year. As a part of sector separation there are sector allocations, which allow each sector to have distinct seasons unaffected (in the short term) by the harvest activity by the other sector, and accountability measures intended to restrain each sector to its allocation and help ensure that the potential benefits expected to accrue to sector separation are realized. Sector separation also established a platform which enables management changes that may result in increased economic benefits to the affected small entities. These effects would be a direct effect of these management changes, as they are implemented, and not of this proposed rule.

The current sector separation sunset date provision limits the cumulative amount and duration of these positive economic effects. The 3-year duration of sector separation as is currently in place is insufficient time to conduct substantive evaluation of each sector's needs, develop and implement appropriate sector-specific management measures, and allow the measures to remain in effect long enough for the benefits to be realized. Additionally, the imminent lapse of the 3-year sunset provision is believed to be a disincentive for business owners to make substantive financial or other operational decisions

that may improve the economic viability of their business. Extending the sunset date for an additional 5 years would be expected to result in increased economic benefits to for-hire small business entities because it would lengthen their planning horizon and opportunity to make beneficial operational changes and would increase the management flexibility to implement sector-specific measures designed to increase the economic benefits accruing to both the for-hire and private angling components.

It is not feasible to generate quantitative estimates of the expected economic benefits expected to accrue to these small for-hire business entities as a result of the proposed change in the sunset date because of an inability to forecast the behavioral changes by the for-hire businesses or the anglers who hire their services, and the absence of detail on, or schedule of implementation of, the sector-specific management measures that may be implemented. Nevertheless, the net effect of the proposed change in the sunset date of sector separation is expected to be an increase in profit per affected small entity.

The proposed change to the Gulf red snapper recreational sector AMs would be administrative, not substantive, in nature, correcting text and regulatory reference errors made in prior

rulemaking. These errors have not affected how the recreational harvest of red snapper has been managed or the behavior of any small entities engaged in the recreational harvest of red snapper. The proposed corrections are consistent with the intent of the prior rulemaking (80 FR 24832, May 1, 2015) and would not be expected to have any direct effect on any small entities.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would result in an increase in revenue and associated profits and would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Quotas, Recreational, Red snapper.

Dated: August 31, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraphs (a)(2)(i)(B) and (C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota,

specified in paragraph (a) (2) (i) (A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--2.964 million lb (1.344 million kg), round weight.

(2) For fishing year 2016--3.042 million lb (1.380 million kg), round weight.

(3) For fishing years 2017 through 2022--2.993 million lb (1.358 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a) (2) (i) (A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--4.043 million lb (1.834 million kg), round weight.

(2) For fishing year 2016--4.150 million lb (1.882 million kg), round weight.

(3) For fishing years 2017 through 2022--4.083 million lb

(1.852 million kg), round weight.

* * * * *

3. In § 622.41, revise paragraphs (q)(2)(iii)(B) and (C) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) * * *

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--2.371 million lb (1.075 million kg), round weight.

(2) For fishing year 2016--2.434 million lb (1.104 million

kg), round weight.

(3) For fishing years 2017 through 2022--2.395 million lb (1.086 million kg), round weight.

(C) *Private angling component ACT*. The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--3.234 million lb (1.467 million kg), round weight.

(2) For fishing year 2016--3.320 million lb (1.506 million kg), round weight.

(3) For fishing years 2017 through 2022--3.266 million lb (1.481 million kg), round weight.

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